98TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 98-285

AUTHORIZING AN INVESTIGATION AND INQUIRY BY THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

JUNE 29, 1983.—Referred to the House Calendar and ordered to be printed

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Mr. LONG of Louisiana, from the Committee on Rules submitted the following

REPORT

[To accompany H. Res. 254]

The Committee on Rules, to whom was referred the resolution (H. Res. 254), having considered the same, reports thereon to the House, with an amendment and with the recommendation that the Resolution do pass. The amendment is as follows:

In section 3, strike "may provide such other reports of the results of its inquiry and investigation as the committee deems appropriate." and insert in lieu thereof the following:

> shall in any event report to the House the results of its inquiry and investigation, and said report shall be made to the House not later than December 30, 1983.

PURPOSE

House Resolution 254 authorizes and directs the Committee on Standards of Official Conduct to undertake an investigation and inquiry into improper alterations of House documents including but not limited to the alleged alteration of transcripts of joint hearings held July 21 and 22, 1982, before certain subcommittees of the Committee on Government Operations, the Committee on Energy and Commerce and the Committee on Science and Technology to review the operation of the Environmental Protection Agency. The resolution authorizes the committee to determine whether any individuals have violated the Code of Official Conduct or any law, rule, regulation, other standards of conduct or engaged in any other misconduct with respect to the events investigated. The resolution, as amended, requires that the committee report to the House the results of its investigation no later than December 30, 1983.

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BACKGROUND AND LEGISLATIVE HISTORY

Allegations have been made recently concerning improper alteration of records of joint hearings entitled "EPA Oversight: One Year Review." These allegations have prompted demands for an investigation of how the alterations occurred.

On July 21 and 22, 1982, joint hearings were held on the operation of the Environmental Protection Agency by the following subcommittees: Subcommittee on Environment, Energy and Natural Resources of the Committee on Government Operations; Subcommittee on Health and the Environment and the Subcommittee on Commerce, Transportation and Tourism of the Committee on Energy and Commerce; and the Subcommittee on Natural Resources, Agriculture Research, and Environment and the Subcommittee on Investigations and Oversight of the Committee on Science and Technology. The hearings were chaired by Representative Toby Moffett of Connecticut, then chairman of the Subcommittee on Environment, Energy and Natural Resources of the Committee on Government Operations. Representatives of the official reporters of committees prepared a tape of the joint hearings and later produced a master transcript.

As is customary in the case of hearings to be printed, copies of the relevant pages of testimony were sent to Members and witnesses who participated in the hearings for editing and corrections of that individuals' remarks. A master copy of the transcript which incorporated these corrections was prepared and sent to the Government Printing Office for printing. After galleys and page proofs were printed and corrected, the hearings were printed and copies were delivered to the committees on May 2, 1983.

Subsequent to distribution of the printed hearings, Representative Walker discovered a discrepancy between his testimony as contained in the printed hearing and as reported in the original transcript. On June 14, 1983, Chairman Brooks of the Committee on Government Operations addressed the House to inform the Members that significant alterations had been discovered in the printed hearing and to assure Members that efforts were being made to discover the facts and find a remedy.

On June 15, 1983, Chairman Brooks, Chairman Fuqua of the Committee on Science and Technology, and Chairman Dingell of the Committee on Energy and Committee sent a letter to Chairman Stokes of the Committee on Standards of Official Conduct requesting that the committee undertake an investigation into the circumstances of the alteration of the transcript. On June 16, Chairman Brooks addressed the House to inform Members of that request. On the same day, at the request of Representatives Horton, Winn, and Broyhill (the ranking minority members of the Committee on Government Operations, the Committee on Science and Technology, and the Committee on Energy and Commerce, respectively), the committee records relating to this situation were impounded.

On June 29, 1983, House Resolution 254 authorizing and directing the Committee on Standards of Official Conduct to investigate the matter of alleged improper alteration of hearing transcripts and committee documents was introduced and referred to the Committee on Rules.

PURPOSE AND SUMMARY OF MAJOR PROVISIONS

House Resolution 254 grants the Committee on Standards of Official Conduct the authority to undertake the inquiry into improper alterations of House documents including the alleged alteration of transcripts of joint hearings held July 21 and 22, 1982, before certain subcommittees of the Committee on Government Operations, the Committee on Energy and Commerce, and the Committee on Science and Technology to review the operation of the Environmental Protection Agency. Under clause 4(e)(1) of rule X of the Rules of the House of Representatives, the committee is empowered to conduct an investigation of alleged violations of the Code of Official Conduct or of any law, rule or regulation of the House applicable to the conduct of Members, officers or employees. However, House Resolution 254 is intended to give the committee a clear mandate from the House to pursue a complete investigation and inquiry of the alleged alteration of hearing transcripts and other committee documents and to permit the establishment of special procedures to facilitate this investigation. The resolution specifically authorizes the committee, after appropriate notice and hearing, to report its recommendations for any disciplinary action it deems appropriate and provide such other reports of the result of the inquiry.

House Resolution 254 provides the committee the discretion of determining the scope of the inquiry and making recommendations to the House regarding the adequacy of the existing code of conduct, laws, rules and regulations applicable to the conduct of Members, officers or employees of the House to prevent the alteration of transcripts of hearings or other documents of committees of the House of Representatives. The Committee on Rules is responsible for the Rules of the House, including the Code of Official Conduct, and would expect to act promptly on any recommendation which might be made, under this resolution, by the Committee on Standards of Official Conduct.

House Resolution 254 authorizes the committee to request or compel, by subpena or otherwise, the attendance and testimony of any person at a hearing or at the taking of a deposition by one or more members of the committee and the production of things of any kind. House Rule XI which grants subpena power to House committees does not specifically address the compelling of testimony or information by interrogatory—a discovery tool in which written questions are propounded by one party and served on the adversary, who must serve written replies thereto under oath. Thus, House Resolution 254 authorizes the committee to compel, by interrogatory, the furnishing under oath of such information it deems necessary to this investigation. A subpena for the taking of a deposition or the production of things may be returnable at such places and times as the committee may direct.

House Rule XI, clause 2(m) requires a majority vote of a committee for the issuance of a subpena unless the committee delegates this power to the chairman. Under House Resolution 254, the authority to compel by subpena or interrogatory may be exercised by the chairman and the ranking minority member acting jointly, or alone, or if either declines or is unable to act, the question may be referred to the com-

mittee for decision as to whether such authority shall be so exercised, or may be exercised by the committee as a whole. Such subpenas or interrogatories may be issued over the signature of the chairman, or ranking minority member, or any member designated by either of them.

House Resolution 254 authorizes the committee to meet without regard to House Rule XI, clause 2(m) at any times or places within United States whether the House is meeting, has adjourned or has recessed.

The committee is authorized to participate by special counsel appointed by the committee on behalf of the committee or the House of Representatives in any judicial proceedings concerning this investigation including proceedings to enforce a subpena. This authority to go to court on behalf of the committee or the House was granted for the Abscam investigation during the 97th Congress and at that time the committee indicated that it might be utilized to go to court to obtain protective orders to insure that information received by the committee from the Justice Department could not be subpenaed by third parties. This authority might be needed in the investigation of improper alteration of hearing transcripts or other documents of committees and thus is included in House Resolution 254. A more limited authority to participate in specific types of court proceedings has been granted for other investigations, including that of the Select Committee on Assassinations pursuant to House Resolution 76, 95th Congress. The authority granted by House Resolution 254 is almost identical to that granted by House Resolution 252, 95th Congress, for the Korean investigation and the same as that granted for the Abscam investigation by House Resolution 67, 97th Congress.

This authority will enable the committee, when necessary, to assert the constitutional prerogatives of the House in obtaining information necessary to its investigation. If the House fails to grant the committee this power to participate in court proceedings to enforce a subpena, the committee would be required to come back to the House each and every time it sought to participate in certain proceedings. This authority is deemed crucial for obtaining confidential information and for securing cooperation of recalcitrant witnesses. In the absence of this authority, the committee could also pursue contempt of Congress proceedings under 2 United States Code 192 or the congressional common law powers which would permit the Sergeant at Arms to forcibly secure attendance before the bar of the offending party.

The authority conferred by House Resolution 254 is intended to augment the authority granted the Committee on Standards of Official Conduct by the Rules of the House of Representatives. Additionally, the resolution authorizes the committee to adopt any special rules or procedures as may be appropriate to facilitate this investigation.

House Resolution 254, as amended, requires that the Committee on tSandards of Official Conduct report the results of its inquiry and investigation to the House not later than December 30, 1983. However, the committee is not relieved of the authority granted by this resolution on December 30, 1983, or upon filing the report required by that date. If further inquiry and investigation beyond December 30, 1983, are necessary the committee shall have full authority to pursue the inquiry and investigation pursuant to the provisions of this resolution and may issue such further reports as are appropriate.

SECTION-BY-SECTION ANALYSIS

Section 1

Authorizes and directs the Committee on Standards of Official Conduct to conduct an investigation into improper alterations of House documents including but not limited to alleged alteration of transcripts of joint hearings entitled "EPA Oversight: One Year Review." Identifies the joint hearings held before certain House subcommittees of the Committee on Government Operation, the Committee on Energy and Commerce, and the Committee on Science and Technology during the 97th Congress, 2d session on July 21 and 22, 1982, to review the activities of the Environmental Protection Agency. Authorizes and directs the committee to determine whether any individuals have violated the Code of Official Conduct or any law, rule or regulation or other applicable standard of conduct, or engage in any other misconduct with respect to the events investigated.

Authorizes the committee to expand the scope of the inquiry to any matters relevant to its responsibility under this resolution or the Rules of the House.

Section 2

Authorizes and directs the committee to report its findings and recommendations with regard to the adequacy of current codes, laws, rules, regulations and other standards of conduct applicable to Members, officers, or employees of the House to prevent alteration of transcripts of hearings or other documents of committees of the House of Representatives.

Section 3

Authorizes the committee, after appropriate notice and hearing, to report its recommendations for any disciplinary action it deems appropriate and, in any event, to report to the House the results of its investigation not later than December 30, 1983.

Section 4

Authorizes the committee to request or compel, by subpena or otherwise, the attendance and testimony of any person at a hearing or at the taking of a deposition by one or more members of the committee and the production of things of any kind. Authorizes the committee to compel, by interrogatory, the furnishing under oath of such information it deems necessary. Provides that the subpena for the taking of a deposition or the production of things may be returnable at such places and times as the committee may direct.

Directs that the authority conferred by this section may be exercised by the chairman and the ranking minority member acting jointly, or, if either declines or is unable to act, by the other acting alone. If either Member declines or is unable to act, either shall have the right to refer the question of whether such authority shall be exercised to the committee and the committee shall be convened as soon as practicable to render that decision. The subpena authority may also be exercised by the commitee acting as a whole.

Directs that subpenas may be issued over the signature of the chairman or ranking minority member or any member designated by them.

Allows any designated person to serve a subpena within or outside the United States.

Allows any member of the committee or any other person authorized by law to administer oaths pursuant to this resolution.

States that all testimony taken by deposition or things produced by deposition, or information furnished by interrogatory or otherwise, other than at a hearing, shall be deemed to have been taken in executive session.

Section 5

Authorizes the committee to sit and act, and to hold hearings, without regard to the prohibition in clause 2(m) of Rule XI of the Rules of the House, as necessary within the United States, whether the House is in session or has recessed or has adjourned.

Section 6

Authorizes the committee to participate, by special counsel appointed by the committee, on behalf of the committee and the House, in judicial proceedings concerning this investigation including proceedings to enforce a subpena.

Section 7

Makes it clear that the authority conferred by this resolution shall be in addition to, and not in lieu of, the committee's authority under the House Rules and authorizes the committee to adopt special rules of procedure as may be appropriate.

COMMITTEE ACTION

On June 29, 1983, the Committee on Rules, which has original jurisdiction over authorizing investigations by House committees, held a hearing on House Resolution 254. Chairman Stokes of the Committee on Standards of Official Conduct and Representative Spence, ranking minority member of that committee, presented testimony in support of the resolution. Representative Winn testified expressing his concern over the ability of Members to present relevant information to the Committee on Standards of Official Conduct. Chairman Stokes assured him that the committee would welcome any information relevant to the matter under investigation.

Representatives Walker, Sensenbrenner, Gregg, and Hiler testified, expressing concern that the scope of the investigation be broad enough to allow consideration of any instance of improper alteration of official transcripts, that the investigation be conducted openly, and that the Committee on Standards of Official Conduct be required to report its findings to the House by a date certain.

After the conclusion of the hearing, Mr. Long moved that the Committee on Rules favorably report House Resolution 254. Mr. Lott offered an amendment requiring the Committee on Standards of Official Conduct to report the results of its investigation to the House by December 30, 1983. The amendment was approved on a voice vote. On June 29, 1983, the Committee on Rules ordered House Resolution 254 favorably reported as a privileged resolution, with an amendment, on a voice vote, a quorum being present.

STATEMENT UNDER CLAUSE 2(l)(3) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

(a) Oversight statement: The committee made no special oversight findings on this resolution.

(b) Budget statement: No budget statement is submitted.

(c) Estimate of the Congressional Budget Office: No estimate or comparison was received from the Director of the Congressional Budget Office as referred to in subdivision (C) of clause 2(l)(3) of the House Rule XI.

(d) Oversight findings or recommendations of the Committee on Government Operations: No findings or recommendations of the Committee on Government Operations were received as refered to in subdivision (d) of clause 2(l)(3) of House Rule XI.

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